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of 2006

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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

SECOND APPEAL NO. 126 /2005

APPELLANT

P.R. No. 630/05
Presented by Shri. Milap Mohd. Son of Haider Seikh
dated 22/03/05

Milap Mohd. Son of Haider Seikh,
aged about 60 years, resident of
village Bojiya, Village Panchayat -
Chitapali, Tah. Dharamjaigarh,
Distt. Raigarh (Chhattisgarh)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through
- the District Collector, Raigarh
(CG) (EX-PARTE)

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2. Secretary, Gram Panchayat
Chitapali, village Bojiya, Tah.
Dharamjaigarh, Distt. Raigarh
(Chhattisgarh)

3. Sarpanch, Village Panchayat -
Chitapali, Tah. Dharamjaigarh,
Distt. Raigarh (Chhattisgarh)

4. The Chief Executive Officer,
Janpad Panchayat -
Dharamjaigarh, Distt. Raigarh
(Chhattisgarh)



SECOND APPEAL UNDER SECTION 100 OF THE CODE OF
CIVIL PROCEDURE, 1908

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 126/2005

APPELLANT : MILAP MOHD.

VERSUS

RESPONDENTS : STATE OF CG AND ORS.

Shri A.N. Bhakta learned counsel for the appellant.
Shri Sanjeev Agrawal PL for the respondent/State.

JUDGMENT

(PASSED ON 7.12.2005)

DHIRNDRA MISHRA, J

The appellant has preferred this appeal against the impugned judgment and decree dated 16.12.2004 passed by District Judge, Raigarh in Civil Appeal No. 16-A/2004 by which the appeal preferred by him against the judgment and decree dated 21.1.2004 passed in Civil Suit No. 4-A/2001 has been dismissed and the judgment and decree of the trial Court has been upheld.

The substantial question of law involved in this appeal for adjudication according to learned counsel for the appellant is "whether the lower appellate Court was justified in not accepting the un-rebutted oral evidence adduced by the plaintiff and dismissing his suit on the ground that he has failed to establish the factum of adverse possession over the suit property for last more than 30 years as the defendants did not file the written statement in regard to the contention of the plaintiff that he has established his possession over the suit property for last more than 50 years, and as such it is perverse?

Learned counsel for the appellant submits that though the plaintiff and his witness namely Gangaram have stated on oath that the plaintiff after taking the possession of the suit land some 50 years back had developed the same and made it cultivable and after constructing the house he is residing therein. This statement of the plaintiff is duly

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supported by the statement of his witness Gangarm. However, the Courts below have disbelieved this oral evidence even though the defendants have not filed the written statement or adduce any evidence in rebuttal. He further submits that the Courts below have disbelieved the oral evidence adduced by the plaintiff on the ground that there is no documentary evidence available on record to establish the plea of the plaintiff.

I have heard learned counsel for the appellant and gone through the impugned judgment passed by the lower Appellate Court and also the pleadings and the evidence adduced by the parties.

The Courts below after analyzing the oral and documentary evidence adduced by the parties and after considering the pleadings of the respective parties have recorded a finding of fact that the plaintiff has failed to establish that he was in possession of the suit property for last more than 30 years and accordingly the suit has been dismissed. From the documents filed by the plaintiff it appears that he had moved an application on 7.12.1997¹⁵¹⁶ stating therein that he was in possession of the suit premises for last 18 years. Thus on the basis of the material available on record both the Courts below have arrived at the conclusion that the plaintiff has failed to establish that he was in possession of the suit property for last more than 30 years and the same is based on proper appreciation of the evidence on record.

Thus in view of above, no substantial question of law is involved in this appeal for adjudication and as such the appeal being without substance is dismissed.

Sd/-
Dhirendra Mishra
Judge

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